

1 KEVIN V. RYAN (California State Bar No. 118321)
 United States Attorney
 2 JAY R. WEILL (California State Bar No. 75434)
 Assistant United States Attorney
 3 Chief, Tax Division
 10th Floor Federal Building
 4 450 Golden Gate Avenue, Box 36055
 San Francisco, California 94102
 5 Telephone: (415) 436-7017
 Fax: (415) 436-6748

6 Attorneys for the United States of America

7 **UNITED STATES DISTRICT COURT FOR THE**
 8 **NORTHERN DISTRICT OF CALIFORNIA**
 9 **SAN FRANCISCO DIVISION**

10 **STEPHEN E. ROULAC and**
 11 **O. D. PARKINSON,**

12 **Plaintiffs,**

13 **v.**

14 **UNITED STATES OF AMERICA,**

15 **Defendant.**

)
) **No. C-04-2671-JSW**
)
)
)
)
)
)
)
)
)

**APPLICATION TO CONTINUE CASE
 MANAGEMENT CONFERENCE AND
 ORDER**

16
 17 This case is set for a Case Management Conference on May 6, 2005. It is a tax refund suit
 18 which relates to a lawsuit filed by the plaintiff against Deloitte & Touche, LLP (Deloitte) and partners
 19 of Deloitte in San Francisco Superior Court. (Case No. 951940). Plaintiff sued Deloitte for breach of
 20 contract, breach of fiduciary duty, fraud, constructive fraud, conspiracy, breach of implied covenant of
 21 good faith and fair dealing and intentional and negligent interference with contract alleging that
 22 defendant Deloitte did not comply with the terms of an agreement with plaintiffs and that the
 23 defendants breached their fiduciary duties to plaintiffs.

24 The case went to trial in San Francisco Superior Court on November 7, 1994 and the jury
 25 returned a verdict in favor of the plaintiff on January 31, 1995 in the amount of \$1,251,155. No
 26 allocation was made by the jury as to any particular count or damage claim. On March 26, 1996 the
 27 case was settled with Deloitte paying the plaintiff \$1,600,000. The settlement agreement and mutual
 28 release provided in paragraph three with respect to the \$1,600,000 that: "Roulac contends that the

above payment is to compensate him for alleged emotional distress damages, and Deloitte agrees that it will take no position with regard to Roulac's contention before any taxing authority." The plaintiff claims that the entire \$1,600,000 settlement amount was payment for emotional distress damages and did not include any of it on his 1996 tax return, claiming it was excludable under 26 U.S.C. § 104(a)(2).

The government filed a motion for summary judgment which was heard on February 4, 2005. The Court did not rule on the motion because of factual issues surrounding the allocation in the settlement agreement and to allow the government an opportunity to depose, James L. Hunt of Bingham McCutchen, Deloitte's attorney who negotiated the settlement agreement. The government had scheduled the deposition of James L. Hunt, for April 8, 2005. The deposition was postponed at the request of Mr. Hunt for family medical reasons. We have scheduled the deposition of Geoffrey Howard for May 3, 2005, who was co-counsel with Mr. Hunt during the Roulac state court case. We have requested him to produce certain records of Bingham McCutchen relating to the Roulac v. Deloitte case. We intend to reschedule the deposition of James Hunt in the near future.

The undersigned will be on vacation from May 9 - 31, 2005. The government requests that the case management conference be continued to June 24, 2005 to allow the government time to complete the depositions of both Geoffrey Howard and James L. Hunt so that the deposition transcripts can be filed with the Court before the Case Management Conference. Plaintiff's counsel, Michael J. Low, has no objection.

Accordingly, we request that the Case Management Conference be continued to June 24, 2005 at 1:30 p.m.

Respectfully submitted,

KEVIN V. RYAN
United States Attorney

JAY R. WELLS
Assistant United States Attorney
Chief, Tax Division

Dated: 4/26/05

ORDER

Upon application of the United States, the Case Management Conference is continued ~~to June 27, 2005 at 1:30 p.m.~~ to June 24, 2005 at 1:30 p.m.

Dated: April 27, 2005

/s/ Jeffrey S. White
JEFFREY S. WHITE
United States District Judge